IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.995 OF 2001

Viji @ Vijayakumar @ Vijayaraj .. Appellant

-Vs-

Inspector of Police,
Upper Coonoor Police Station,
Nilgiris District .. Respondent

This criminal appeal is preferred under Section 374(2) of Cr.P.C. against the order and judgment of the learned Sessions Judge of Nilgiris Division at Udhagamandalam in S.C.No.33 of 1998 dated 26.7.2001.

!For Appellant : Mr.T.Ravichandran
Amicus curiae

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The appellant, who was ranked as A2 in S.C.No.33 of 1998, was charged, tried under Sections 450, 394(2 counts), 395 and 397 I.P.C. and found guilty under Sections 450 and 395 I.P.C. and sentenced to undergo R.I. for five years and also to pay a fine of Rs.5000/- and in default to undergo S.I. for a period of six months each under Sections 450 and 395 I.P.C. Aggrieved second accused/appellant has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

a) P.W.1, Ramanik Singh along with his mother P.W.2, Keerat Rajpal Singh was residing at Grossways Bungalow, Upper Coonoor. P.W.3, Gandhi and P.W.4, Kirubhakaran were servants, who were residing in the out house of the Bungalow. On 13.3.1995, midnight, the appellant along with one Ravi shown as A1, Moorthy, Arun Pandian @ Mail (Absconding accused) and Murugesh, the deceased entered into the house of P.W.1 with common intention to commit robbery. P.W.1, who heard the barking of dog furiously, looked outside and saw some persons were outside their residence. He went outside with P.Ws.3 and 4 with torch light and a pistol. Looking at this, the persons, who were outside, ran away to the main road. They were chased, but they could not be caught.

b) At that time, they heard P.W.2 screaming. They rushed to the spot

and found the two persons caught hold of P.W.2 and stabbed P.W.2 several times with knife on her left thigh and neck. One of the accused asked P.W.1 to put the pistol down or else they would kill P.W.2. Immediately, P.W.1 dropped the weapon. The two other accused came near to P.W.1 with knives and asked him to take them inside the bungalow at knife point. One of the accused was showing pistol towards P.W.1. The accused demanded opening of cupboard in P.W.2's room and handing over the cash and other valuables. P.W.1 opened the cupboard. The accused took the following items:

1) Three or four gold chains
2) Six or Seven gold and diamond rings.
3) Three or four sets of gold bangles
4) Four silver coins
5) Two hundred and fifty US dollars
6) Cash Rs.4000/- and some other valuables.

During the short interval, P.W.3 went to Highfield cottages and returned with one Mr.Gill and two watchmen. Meanwhile, the robbers asked P.w.1 to drop them to Coonoor at knife and gun point. Finding no option P.W.1 took them in his Car bearing registration No.TNN 7364. The second accused, in the meanwhile, escaped from the scene of occurrence, while the other four accused available were taken in the said car by P.W.1. One of them got down from the car and opened the gate. At that moment Mr.Gill, P.W.3 and two other watchmen came with gun and stopped the car. Another accused, who was sitting left side of P.W.2 , stabbed P.W.2 on his left palm and left side of his neck. Immediately, Mr.Gill pointed the gun at the accused inside the car. At that time, P.W.1 removed the gun from the accused and for protecting himself fired on the accused quickly and jumped out of the car. The car slowly moved downhill about 50 feet near the electric post and stopped on a pile of mud. Two accused were caught, while one accused escaped into the jungle with the valuables.

c) P.Ws.1 and 2 were admitted in Nankem Hospital, Coonoor, where they were given treatment by P.W.6 Doctor, A.K. Shinde. P.W.14, Sub Inspector of Police attached to Coonoor Police Station proceeded to the hospital, recorded the statement of P.Ws.1 and 2 and registered a case on the strength of the statement given by P.W.1 in Cr. No.42/95 under Sections 394, 397, 307 and 449 I.P.C. and 174 Cr.P.C. Express F.I.R. under Ex.P.30 was sent to concerned Court. On receipt of a copy of F.I.R., P.W.13 Inspector of Police took up investigation and proceeded to the site of occurrence. He took custody of Ravi, the first accused and Moorthy, the absconding accused, who were caught by Mr. Gill and others and arrested them. They volunteered to give confessional statements, which were recorded. The Investigating Officer prepared Ex.P.4, Observation Mahazar and Ex.P.31, Rough sketch. He conducted inquest on the dead body of Murugesh in the presence of witnesses and recovered M.Os.25 to 34. The Investigating Officer examined Mr. Gill and recovered M.Os.1 and 2, B.P.L. Gun and Hand Gun. He proceeded to Nankem hospital and recorded the statement of P.Ws.1 and 2.

d) On 15.3.1995, P.W.13 examined P.W.7 Dr.Ramachandran, who conducted postmortem on the dead body of the deceased/accused. On 23.3.1995 he examined P.W.6 Dr. A.K.Shinde, who treated P.Ws.1 and 2 at Nankem Hospital at Coonoor. On 8.4.1995 on information P.W.13 arrested one absconding accused, namely, Arun Pandia n @ Mail. On 25.5.1995, P.W.1 3 made a requisition before the Judicial Magistrate at Coonoor for sending the material objects to the

Forensic Laboratory. On 26.11.1995 , P.W.13 arrested A2 in front of P.W.8 and other witness. He volunteered to give a confessional statement and the same was recorded by P.W.13. The admissible portion of the same was marked as Ex.P.14. Pursuant to the confessional statement given by the second accused, M.Os.8 to 12 and 22 were recovered by P.W.13 under Exs.P.15, 16 and 17 Mahazar from P.Ws.11 and 12. He examined one Sait @ Anandakumar and thereafter the witness died. P.W.13 made a request under Ex.P.18 to the Chief Judicial Magistrate, Ooty for conducting Test Identification Parade in respect of the appellant/second accused. P.w.9, the Judicial Magistrate, Kothagiri received Ex.P.18 through chief Judicial Magistrate, Ooty and conducted Test Identification Parade on 8.12.1995 at Sub Jail, Coonoor. The proceedings were marked as Ex.P.20.

e) On completion of investigation, P.W.13 filed a charge sheet against the accused under Sections 450, 325, 395, 397 r/w 395 I.P.C.

3. In order to prove the charges levelled against the accused, the prosecution examined 14 witnesses and marked 33 exhibits and 35 M.Os. After the evidence of prosecution was completed, both the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which the accused flatly denied as false. One Manikandan was examined as D. W.1 on the side of the accused. After consideration of the rival submissions and scrutiny of the materials available, the trial court found the accused guilty under Section 450 and 395 I.P.C. and sentenced to undergo the imprisonment as referred to above, but acquitted them in respect of the rest of the charges levelled against them. Aggrieved second accused has brought forth this appeal.

4. Advancing arguments on the side of the appellant/second accused, the learned counsel made the following submissions.

On a careful scrutiny of the evidence of P.Ws.1 and 2, which was much relied on by the trial court to find the second accused/appellant guilty, it would be clear that they have not clearly identified the accused. They have not spoken anything about the acts committed by him. The identification parade cannot be given any weight, since the identification parade was conducted after five months from the date of occurrence. The trial court has relied on the recovery of M.Os. from P.Ws.11 and 12. A close scrutiny of the evidence of P.Ws.11 and 12 would clearly indicate that they came forward to give a false evidence to support the prosecution case. Thus, the prosecution has not brought forth any nexus between the appellant/second accused and the crime in question. In the absence of the same, the trial court has given unnecessary credence to the evidence of P.Ws.1 and 2, the identification parade conducted after five months and the recovery based on the discrepant evidence of P.Ws.11 and 12, and thus, the trial court was not correct in coming to a conclusion that the second accused/ appellant was guilty. Hence, it has got to be set aside.

5. Opposing to the said contentions of the appellant's side, the learned Government Advocate would contend that P.Ws.1 and 2 were injured; that they were treated by P.W.6 Doctor at Nankem Hospital; that P. Ws.3 and 4 were also the eyewitnesses to the occurrence; that from the available materials, it would be clear that the occurrence has taken place for some time; that the prosecution witnesses have narrated the incident with full sequences; that there was all possibility to note that the accused was participated in the crime; that in the identification parade, the second accused was clearly

identified; that this identification parade cannot be attacked because of the delay, since it was conducted within a reasonable time from the arrest of A2; that the jewels belonged to P.Ws.1 and 2 were recovered pursuant to the confessional statement given by A2 in the presence of P.W.8 and the other witness from P.Ws.11 and 12; that P.Ws.11 and 12 have categorically spoken to the fact as to the handing over of jewels by A2; that this part of the evidence would clearly stand as a clinching proof that it was A2, who participated in the said crime; that under the stated circumstances the contentions put forth by the appellant's side have got to be rejected as meritless, and hence, the judgment of the lower court has got to be affirmed.

6. This Court paid its full attention on the rival submissions and had close scrutiny of the materials available and is of the considered view that the appeal carries no merit. On the date of occurrence, P.W.1 along within his mother P.W.2 was in his Grossways Bungalow. During witch hour on 13.3.1995 after hearing the barking noise of his dog, P.W.1 looked outside and found some persons. P.W.1 came out along with P.Ws.3 and 4. The accused, who assembled there with a common intention to commit robbery, were about to go out. They were chased by P.W.1, but could not be caught. At that time, they found the two of the accused caught hold of P.W.2 and caused severe injuries to her. At the knife point, the accused took P.W.1 into the house and robbed the jewels along with cash of Rs.4000/-, 250 US dollars and U.K. pounds, totally worth Rs.2,22,500/-. Not satisfied with the same, they demanded P.W.1 to drop them at Coonoor. When they were about to proceed, there was an intervention by one Mr.Gill. One of the accused Murugesan was about to escape from the Car and he was shot at by P.w.1 and due to injury, he succumbed. Two accused were caught by P.W.1, P. W.3, Mr.Gill and others. A case was registered within short span of time and the investigation was taken up. The two accused were handed over to the police. During investigation, P.W.13 has arrested the accused on 26.11.1995 in the presence of P.w.8 and the other witness. Pursuant to the confessional statement made by him, M.Os.8 to 12 and 22 were recovered from P.W.11 and 12 under Exs.P.15, 16 and 17 Mahazars. Both these witnesses were examined to speak to the fact of entrustment of jewels by A2.

7. It is true that the appellant's counsel was able to point out certain discrepancies in the evidence of P.Ws.11 and 12. The Court is of the view that the same would not in any way diminish the truth of the statement to the substance that it was A2, who handed over the jewels to them. At this juncture, it has to be pointed out that the jewels were recovered from P.Ws.11 and 12 pursuant to the confessional statement given by A2. The ownership of the same is not disputed by the appellant's side anywhere in the evidence. Hence, the ownership of jewels in question coupled with the confessional statement given by the second accused/appellant, which led to the recovery of the same from P.Ws.11 and 12, who have categorically spoken to the fact that it was A2 who handed over them would clearly prove the nexus between the second accused and the crime in question. It is noticed that P.W.9, the Judicial Magistrate, Kothagiri conducted identification parade, as per the orders of Chief Judicial Magistrate, Ooty on 8.12.1995. It is pertinent to note that the appellant was arrested on 26.11.1995 and the identification parade was conducted within 10 days. It remains to be stated that the witnesses have clearly identified the second accused at the time of identification parade. Hence, taking into consideration of all the cumulative

facts and circumstances of the case and in the face of the evidence what was adduced by the prosecution, the trial court was perfectly correct in holding that with an intention of committing robbery, the second accused/appellant along with others entered into the residence of P.W.1 at night hours and caused injury to P.Ws.1 and 2 and have robbed jewels as mentioned above. Hence, the trial court was perfectly correct in finding the accused guilty under Sections 450 and 395 I.P.C. The Court is of the view that there is nothing to interfere either in the conviction or in the sentence imposed by the trial court on the appellant/second accused.

8. In the result, this criminal appeal is dismissed confirming the judgment of the trial court.

Index : Yes
Internet : Yes
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To
1. The Sessions Judge, Udhagamandalam
2. The Superintendent, Central Prison, Coimbatore
3. The Public Prosecutor, High Court, Madras
4. The Dy. Inspector General of Police, Chennai-4
5. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. Side)
High Court, Madras
6. The Inspector of Police, Upper Coonoor Police Station
Nilgiris District